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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEALS BOARD

U.S. Reg. No. 1,384,270

OMNOVA SOLUTIONS, INC.,

Petitioner;

v.

THE DIE GEM CO., INC.,

Respondent.

Cancellation No. 92043900

73420918

**COVER LETTER**

Sir:

Please find enclosed for filing with the Trademark Trial and Appeals Board, the following document(s):

1. Petitioner's Renewed Motion for Default Judgment Under Rules 2.106 and 2.114.
2. Certificate of Service on Respondent.

Respectfully submitted,

Ajay A. Jagtiani

**JAGTIANI + GUTTAG**  
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703.591.2664 (Phone)  
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Date: July 25, 2005



07-25-2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEALS BOARD**

U.S. Reg. No. 1,384,270

OMNOVA SOLUTIONS, INC.,

Petitioner;

v.

THE DIE GEM CO., INC.,

Respondent.

Cancellation No. 92043900

**PETITIONER'S RENEWED MOTION FOR  
DEFAULT JUDGMENT OF CANCELLATION**

Petitioner OMNOVA Solutions, Inc. ("OMNOVA Solutions"), pursuant to Trademark Rules 2.106 and 2.114, hereby renews its motion for a default judgment against Respondent, the Die Gem Co., Inc. ("Die Gem"), for failing to make a timely answer. Die Gem has failed to submit an answer for over seven weeks from the second deadline (June 1, 2005) that was established by a specific order of the Trademark Trial and Appeal Board (the "Board") dated April 22, 2005.

1. On November 22, 2004, Petitioner OMNOVA Solutions filed a petition to cancel Die Gem's U.S. Reg. No. 1,384,270 for "Peel N Stick" (the "Challenged Registration"). Respondent Die Gem did not answer the Petition.

2. No answer having been received within forty days, on February 17, 2005, the Board issued a Notice of Default.

3. On March 25, 2005, still with no answer having been received, the Board entered judgment by default against Die Gem (the "First Default Judgment"), canceling

the Challenged Registration. On April 20, 2005, a Commissioner's order issued canceling the Challenged Registration in its entirety.

4. On April 4, 2005, Die Gem filed a motion to quash the default judgment, asserting that it had not received the Notice of Default. Die Gem never served that motion on Petitioner OMNOVA Solutions as required by Trademark Rule 2.119, and Petitioner never saw it before the TTAB vacated the First Default Judgment.

5. On April 22, 2005, in response to Die Gem's never-served motion to quash, the Board set aside the First Default Judgment and reinstated the Challenged Registration. The Board granted Respondent an additional forty days (until June 1, 2005) to answer the Petition, giving Die Gem yet another chance to answer it.

6. Thus, through its Order dated April 22, 2005, the Board established a second deadline of June 1, 2005 for Die Gem to answer the cancellation petition.

7. Now, six weeks past that deadline set by a specific order from the Board, Die Gem still is flouting the Board's rules and has not answered the Petition.

8. Die Gem already has received a Notice of Default but still is over seven weeks late in meeting its second answer deadline.

9. Die Gem is further flouting the Board's rules by failing to provide OMNOVA Solutions with any answer, objection, or other response whatsoever to OMNOVA Solutions' first set of discovery requests, which were served on January 18, 2005. Responses to those discovery requests are more than five months overdue, unduly delaying the progress of this case.

10. Trademark Rules 2.106(a) and 2.114(a) provide for entry of a default judgment for failure to file a timely answer. Federal Rule of Civil Procedure 37, incorporated into Trademark Rules 2.116 and 2.120(g), authorizes entry of a default

judgment as a sanction for failure to answer discovery. *See also* Trademark Rule 2.120(g)(1&2). OMNOVA Solutions has received no answer or discovery responses from Die-Gem.

11. Due to Die Gem's failure to answer the petition or discovery, and its blatant disregard for the processes of the Board, entry of a second default judgment canceling the Challenged Registration is now appropriate.


12. This scheduling order in this case already has been revised once due to Respondent's failure to comply with its deadlines.

13. On the merits, Die Gem has not made or documented to OMNOVA Solutions continued use of the mark that is the subject of the Challenged Registration in the relevant class of goods.

14. In addition, Die Gem never provided OMNOVA Solutions with any documents or evidence in response to Petitioner's discovery or other requests for proof of continued use of the mark in the relevant class of goods, or otherwise. Therefore, Die Gem has failed to make or show continuing use in commerce in the relevant class of goods.

15. WHEREFORE, OMNOVA Solutions hereby respectfully requests entry of a default judgment canceling the Challenged Registration on the grounds of abandonment and procedural default.

Respectfully submitted,



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Ajay A. Jagtiani

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10363-A Democracy Lane  
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Date: July 25, 2005

**CERTIFICATE OF SERVICE**

I certify that on the 25th day of July, 2005, a Petitioner's Renewed Motion for Default Judgment Under Rules 2.106 and 2.114, was filed with the Trademark Trial and Appeals Board, in the United States Patent and Trademark Office in re: Cancellation No. 92043900.

I certify that on the 25th day of July, 2005, a copy of the foregoing Petitioner's Renewed Motion for Default Judgment Under Rules 2.106 and 2.114, was served by U.S. Mail, properly addressed and postage prepaid, on the correspondent of record for the Respondent:

Mr. James R. Adams, President  
The Die Gem Co., Inc.  
P.O. Box 8033 Maple Valley Station  
Akron, Ohio 44320

A handwritten signature in black ink, appearing to read "Michael C. Whitticar", written in a cursive style.

/s/ Michael C. Whitticar